

107TH CONGRESS  
2D SESSION

# H. R. 3645

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## AN ACT

To amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.



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To amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items.

1       *Be it enacted by the Senate and House of Representa-*  
2   *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Veterans Health Care and Procurement Improvement  
4 Act of 2002”.

5 (b) TABLE OF CONTENTS.—The table of contents for  
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References to title 38, United States Code.
- Sec. 3. Limitation on use of local contracts for Department of Veterans Affairs procurement of health-care items.
- Sec. 4. Enhancements to enhanced-use lease authority.
- Sec. 5. Eligibility for Department of Veterans Affairs health care of certain additional Filipino World War II veterans residing in the United States.
- Sec. 6. Outpatient dental care for all former prisoners of war.
- Sec. 7. Improved accountability of research corporations established at Department of Veterans Affairs medical centers.
- Sec. 8. Department of Defense participation in Revolving Supply Fund purchases.
- Sec. 9. Name of Department of Veterans Affairs outpatient clinic, New London, Connecticut.

7 **SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

8 Except as otherwise expressly provided, whenever in  
9 this Act an amendment or repeal is expressed in terms  
10 of an amendment to, or repeal of, a section or other provi-  
11 sion, the reference shall be considered to be made to a  
12 section or other provision of title 38, United States Code.

13 **SEC. 3. LIMITATION ON USE OF LOCAL CONTRACTS FOR**  
14 **DEPARTMENT OF VETERANS AFFAIRS PRO-**  
15 **CUREMENT OF HEALTH-CARE ITEMS.**

16 (a) IN GENERAL.—Section 8125 is amended to read  
17 as follows:

1 **“§ 8125. Procurement of health-care items**

2 “(a) Except as provided in subsection (b), any pro-  
3 curement of a health-care item by the Department shall  
4 be made through the use of a Federal Supply Schedule  
5 contract, or a national contract, that meets the require-  
6 ments of subsection (d).

7 “(b)(1) Subsection (a) does not apply to a procure-  
8 ment of a health-care item in any of the following cases:

9 “(A) A procurement that is necessary to meet  
10 a current or near-term medical emergency at a med-  
11 ical center.

12 “(B) A procurement that is for a health-care  
13 item that is not listed in the Federal Supply Sched-  
14 ule or as part of a national contract and for which  
15 there is a valid clinical need.

16 “(C) A procurement that is for a specialized  
17 health-care item not listed in the Federal Supply  
18 Schedule or as part of a national contract and that  
19 is to meet the special needs of an individual patient  
20 who has one of the special needs identified in section  
21 1706(b) of this title and who has a valid clinical  
22 need for the item.

23 “(D) A procurement that is part of an approved  
24 sharing agreement between the Department of De-  
25 fense and the Department of Veterans Affairs with  
26 demonstrable cost-per-item savings for a health-care

1 item listed on the Federal Supply Schedule or a na-  
2 tional contract.

3 “(E) A procurement that supports a prime con-  
4 tract or a subcontract with a small business concern  
5 qualifying for a procurement preference program  
6 under section 8 or 15 of the Small Business Act (15  
7 U.S.C. 637, 644).

8 “(2) A procurement may be made as authorized  
9 under subparagraph (B) of paragraph (1) only if the pro-  
10 curement is specifically authorized in advance in writing  
11 by the Secretary. The authority of the Secretary under  
12 the preceding sentence may only be delegated to the Dep-  
13 uty Secretary or to an official of the Veterans Health Ad-  
14 ministration not below the level of a Deputy Under Sec-  
15 retary (or equivalent) acting jointly with a procurement  
16 executive of the Department not below the level of an As-  
17 sociate Deputy Assistant Secretary.

18 “(c) In the case of an emergency procurement of a  
19 health-care item as authorized by subsection (b)(1)(A), the  
20 quantity of the item procured may not exceed the quantity  
21 of that item that is the reasonably foreseeable need for  
22 the item at the medical center concerned until resupply  
23 can be achieved through procurement actions other than  
24 emergency procurement.

1 “(d) A contract meets the requirements of this sub-  
2 section if the contract includes—

3 “(1) provisions referred to as ‘preaward and  
4 postaward audit clauses’; and

5 “(2) a provision referred to as a ‘price reduc-  
6 tion clause’.

7 “(e)(1) The Secretary shall establish procedures to  
8 assure compliance by each Department medical facility  
9 with the provisions of this section and with applicable Fed-  
10 eral and Department procurement regulations.

11 “(2) The procedures established by the Secretary  
12 under paragraph (1) shall be designed to maximize health-  
13 care item variety and the use of the Federal Supply Sched-  
14 ule.

15 “(3) The Secretary shall establish and enforce proce-  
16 dures limiting the standardization of items at the local,  
17 regional, or national level to provide special patient popu-  
18 lations (as identified in section 1706(b) of this title) with  
19 the range and types of health-care items required to meet  
20 their clinical and quality-of-life needs.

21 “(4) The Advisory Committee on Prosthetics and  
22 Special-Disabilities Programs established under section  
23 543 of this title shall review the procedures established  
24 under paragraph (3), including the implementation of  
25 those procedures, and shall advise the Secretary when

1 those procedures are not effectively enforced by the De-  
2 partment.

3 “(f)(1) The Secretary shall establish annual goals for  
4 Department medical centers for the purchase of health-  
5 care items from Federal Supply Schedule and national  
6 contracts meeting the requirements of subsection (d).  
7 Such goals shall be designed to maximize the percentage  
8 of such purchases that are made through such contracts.

9 “(2) The Secretary shall establish goals for the De-  
10 partment for procurements from small business concerns  
11 qualifying for a procurement preference program under  
12 section 8 or 15 of the Small Business Act (15 U.S.C. 637,  
13 644). Such goals shall be no less than the national goal  
14 for each such procurement preference program under ei-  
15 ther of those sections.

16 “(3) Achievement of the goals established under this  
17 subsection shall be an element in the performance stand-  
18 ards for employees of the Department who have the au-  
19 thority and responsibility for achieving those goals.

20 “(g) A provision of law that is inconsistent with any  
21 provision of this section shall not apply, to the extent of  
22 the inconsistency, to the procurement of a health-care item  
23 for the Department.

24 “(h)(1) Not later than December 31 each year, the  
25 Secretary shall submit to the Committees on Veterans’ Af-



1   fairs of the Senate and House of Representatives a report  
2   on the procurement of health-care items during the pre-  
3   ceding fiscal year. Each such report shall include, for the  
4   year covered by the report, the following:

5           “(A) The total dollar amount of all items listed  
6           in Federal Supply Classification (FSC) Group 65 or  
7           66 and the total dollar value of the exceptions to  
8           subsection (a) under each of subparagraphs (A),  
9           (B), (C), (D), and (E) of subsection (b)(1), shown  
10          by medical facility.

11          “(B) A detailed explanation for exceptions to  
12          subsection (a), including—

13                  “(i) the rationale for use of emergency pro-  
14                  curement at Department medical facilities;

15                  “(ii) the rationale for approval of requests  
16                  under subsection (b)(1)(B) for procurement of  
17                  items not listed on the Federal Supply Schedule  
18                  or on national contracts; and

19                  “(iii) exceptions granted for special health-  
20                  care needs of veterans with disabilities de-  
21                  scribed in section 1706(b) of this title.

22          “(C) Analysis of sharing agreements between  
23          the Department and the Department of Defense to  
24          indicate the basic written sharing initiative and the

1 division of financial responsibility between the two  
2 Departments.

3 “(D) The stated goal under each procurement  
4 preference program, together with an assessment of  
5 the performance of the Department toward achieve-  
6 ment of that goal, especially with respect to the goal  
7 for contracting with businesses that are owned by  
8 veterans with service-connected disabilities.

9 “(2) The Advisory Committee on Prosthetics and  
10 Special- Disabilities Programs of the Department shall  
11 submit comments on each report under paragraph (1) be-  
12 fore the report is submitted under that paragraph, and  
13 the Secretary shall include those comments in the report  
14 as submitted.

15 “(i) For the purposes of this subsection:

16 “(1) The term ‘health-care item’ includes any  
17 item other than services listed in, or (as determined  
18 by the Secretary) of the same nature as an item list-  
19 ed in, Federal Supply Classification (FSC) Group 65  
20 or 66.

21 “(2) The term ‘national contract’ means a con-  
22 tract for procurement of an item that is entered into  
23 by the National Acquisition Center of the Depart-  
24 ment or another Department procurement activity,

1 as authorized by the Secretary, that is available for  
2 use by all Department medical facilities.

3 “(3) The term ‘valid clinical need’ means in the  
4 professional judgment of an appropriate clinician.  
5 Such term applies to health care items, prosthetic  
6 appliances, sensory or mobility aids and supplies  
7 that are prescribed by a physician for special patient  
8 populations such as veterans with spinal cord dys-  
9 function, blindness, amputations, and other veterans  
10 included in section 1706(b) of this title.

11 “(4) The term ‘Federal Supply Schedule con-  
12 tract’ means a contract that is awarded and admin-  
13 istered by the National Acquisition Center of the  
14 Department under a delegation of authority from  
15 the Administrator of the General Services Adminis-  
16 tration.

17 “(5) The term ‘emergency procurement’ means  
18 a procurement necessary to meet an emergency need  
19 affecting the health or safety of a person being fur-  
20 nished health-care services by the Department.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 subsection (a) shall take effect on September 30, 2003,  
23 and shall apply to procurements by the Secretary of Vet-  
24 erans Affairs after that date.

1 **SEC. 4. ENHANCEMENTS TO ENHANCED-USE LEASE AU-**  
2 **THORITY.**

3 (a) INCREASED FLEXIBILITY UNDER ENHANCED-  
4 USE LEASES.—Section 8162(a)(2)(B) is amended—

5 (1) by striking “proposed by the Under Sec-  
6 retary for Health” and inserting “proposed by one  
7 of the Under Secretaries”; and

8 (2) by striking “to the provision of medical care  
9 and services” and inserting “to the programs and  
10 activities of the Department”.

11 (b) NOTIFICATION OF PROPERTY TO BE LEASED.—  
12 Section 8163 is amended—

13 (1) in the first sentence of subsection (a)—

14 (A) by striking “designate a property to be  
15 leased under an enhanced-use lease” and insert-  
16 ing “enter into an enhanced-use lease with re-  
17 spect to certain property”; and

18 (B) by striking “before making the des-  
19 ignation” and inserting “before entering into  
20 the lease”;

21 (2) in subsection (b), by striking “of the pro-  
22 posed designation” and inserting “to the congres-  
23 sional veterans’ affairs committees and to the public  
24 of the proposed lease”; and

25 (3) in subsection (c)—

26 (A) in paragraph (1)—

1 (i) by striking “designate the property  
2 involved” and inserting “enter into an en-  
3 hanced-use lease of the property involved”;  
4 and

5 (ii) by striking “to so designate the  
6 property” and inserting “to enter into such  
7 lease”;

8 (B) in paragraph (2), by striking “90-day  
9 period” and inserting “45-day period”;

10 (C) in paragraph (3)—

11 (i) by striking “general description”  
12 in subparagraph (D) and inserting “de-  
13 scription of the provisions”; and

14 (ii) by adding at the end the following  
15 new subparagraph:

16 “(G) A summary of a cost-benefit analysis of  
17 the proposed lease.”; and

18 (D) by striking paragraph (4).

19 (c) DISPOSITION OF LEASED PROPERTY.—Section  
20 8164 is amended—

21 (1) in subsection (a)—

22 (A) by striking “by requesting the Admin-  
23 istrator of General Services to dispose of the  
24 property pursuant to subsection (b)” in the  
25 first sentence; and

1 (B) by striking the third sentence;

2 (2) in subsection (b)—

3 (A) by striking “Secretary and the Admin-  
4 istrator of General Services jointly determine”  
5 and inserting “Secretary determines”; and

6 (B) by striking “Secretary and the Admin-  
7 istrator consider” and inserting “Secretary con-  
8 siders”; and

9 (3) in subsection (c), by striking “90 days” and  
10 inserting “45 days”.

11 (d) USE OF PROCEEDS.—Section 8165 is amended—

12 (1) in subsection (a)—

13 (A) by striking “(1)” after “(a)”;

14 (B) by inserting after “of this title” the  
15 following: “, except that any funds received by  
16 the Department under an enhanced-use lease in  
17 support of the Veterans Benefits Administra-  
18 tion or the National Cemetery Administration  
19 and remaining after any deduction from such  
20 funds under subsection (b) shall be credited to  
21 applicable appropriations of that Administra-  
22 tion”; and

23 (C) by striking paragraph (2);

24 (2) in subsection (b), by adding at the end the  
25 following new sentence: “The Secretary may use the

1 proceeds from any enhanced-use lease to reimburse  
 2 applicable appropriations of the Department for any  
 3 expenses incurred in the development of additional  
 4 enhanced-use leases.”; and

5 (3) by striking subsection (c).

6 (e) CLERICAL AMENDMENTS.—(1) The heading of  
 7 section 8163 is amended to read as follows:

8 **“§ 8163. Hearing and notice requirements regarding**  
 9 **proposed leases”.**

10 (2) The item relating to section 8163 in the table of  
 11 sections at the beginning of chapter 81 is amended to read  
 12 as follows:

“8163. Hearing and notice requirements regarding proposed leases.”.

13 **SEC. 5. ELIGIBILITY FOR DEPARTMENT OF VETERANS AF-**  
 14 **FAIRS HEALTH CARE OF CERTAIN ADDI-**  
 15 **TIONAL FILIPINO WORLD WAR II VETERANS**  
 16 **RESIDING IN THE UNITED STATES.**

17 (a) ELIGIBILITY FOR HEALTH CARE.—The text of  
 18 section 1734 is amended to read as follows:

19 “(a) The Secretary shall furnish hospital and nursing  
 20 home care and medical services to any individual described  
 21 in subsection (b) in the same manner, and subject to the  
 22 same terms and conditions, as apply to the furnishing of  
 23 such care and services to individuals who are veterans as  
 24 defined in section 101(2) of this title. Any disability of  
 25 an individual described in subsection (b) that is a service-

1 connected disability for purposes of this subchapter (as  
2 provided for under section 1735(2) of this title) shall be  
3 considered to be a service-connected disability for purposes  
4 of furnishing care and services under the preceding sen-  
5 tence.

6 “(b) Subsection (a) applies to any individual who is  
7 a Commonwealth Army veteran or new Philippine Scout  
8 and who—

9 “(1) is residing in the United States; and

10 “(2) is a citizen of the United States or an  
11 alien lawfully admitted to the United States for per-  
12 manent residence.”.

13 (b) LIMITATION.—The amendment made by sub-  
14 section (a) shall take effect on the date on which the Sec-  
15 retary of Veterans Affairs submits to the Committees on  
16 Veterans’ Affairs of the Senate and House of Representa-  
17 tives and publishes in the Federal Register a certification  
18 that sufficient resources are available for the fiscal year  
19 during which the certification is submitted to carry out  
20 section 1734 of title 38, United States Code, as amended  
21 by such amendment, during that fiscal year at those facili-  
22 ties of the Department of Veterans Affairs where the ma-  
23 jority of veterans described in subsection (b) of such sec-  
24 tion will receive hospital and nursing home care and med-  
25 ical services authorized by subsection (a) of such section.



1 **SEC. 6. OUTPATIENT DENTAL CARE FOR ALL FORMER**  
2 **PRISONERS OF WAR.**

3 Section 1712(a)(1)(F) is amended by striking “and  
4 who was detained or interned for a period of not less than  
5 90 days”.

6 **SEC. 7. IMPROVED ACCOUNTABILITY OF RESEARCH COR-**  
7 **PORATIONS ESTABLISHED AT DEPARTMENT**  
8 **OF VETERANS AFFAIRS MEDICAL CENTERS.**

9 (a) AUDITS AND IMPROVED ANNUAL REPORT.—Sub-  
10 section (b) of section 7366 is amended to read as follows:  
11 “(b)(1) Not later than March 1 each year, each such  
12 corporation shall submit to the Secretary a report con-  
13 cerning the preceding calendar year. Each such annual re-  
14 port shall include the following:

15 “(A) A detailed statement of the corporation’s  
16 operations, activities, and accomplishments during  
17 the preceding calendar year.

18 “(B) A description of each research project or  
19 activity for which funds were provided by the cor-  
20 poration during that year or for which funds were  
21 provided by the corporation during a preceding year  
22 and that is ongoing during the year covered by the  
23 report, including, for each such project or activity,  
24 the title of the project or activity and a description  
25 of the purpose of the project or activity.

1           “(C) A statement of the amount of funds con-  
2           trolled by the corporation as of the first day, and as  
3           of the last day, of the year covered by the report and  
4           a statement of the amount of funds received, shown  
5           by source, during the year.

6           “(D) An itemized accounting of all disburse-  
7           ments made during the year.

8           “(E) The most recent audit of the corporation  
9           under paragraph (2).

10          “(F) Such other information as may be nec-  
11          essary to enable the Secretary to prepare the annual  
12          report to congressional committees required under  
13          section 7367 of this title.

14          “(2) A corporation with a balance of funds under its  
15          control in excess of \$300,000 at any time during a cal-  
16          endar year shall obtain an audit of the corporation for that  
17          year. Any other corporation shall obtain an independent  
18          audit of the corporation at least once every three years.  
19          The report on any such audit shall specifically state  
20          whether the corporation audited made any payment, or  
21          provided any travel, during the period covered by the audit  
22          to a member of the board of directors of the corporation  
23          and, if so, the amount and recipient of any such payment  
24          or travel.

1       “(3) Any audit under paragraph (2) shall be per-  
 2       formed by an independent auditor and shall be performed  
 3       in accordance with generally accepted Government audit-  
 4       ing standards and in accordance with Office of Manage-  
 5       ment and Budget Circular A-133.

6       “(4) The Inspector General of the Department shall  
 7       each year review the most recent audit under paragraph  
 8       (2) of not less than 10 percent of the corporations de-  
 9       scribed in the first sentence of paragraph (2) and not less  
 10      than 10 percent of the corporations described in the sec-  
 11      ond sentence of that paragraph. As part of such review,  
 12      the Inspector General shall determine whether the audit  
 13      was carried out in accordance with generally accepted  
 14      Government auditing standards, as required by paragraph  
 15      (3).”.

16      (b) ANNUAL REPORT OF SECRETARY.—(1) Sub-  
 17      chapter IV of chapter 73 is amended—

18               (A) by inserting after subsection (c) of section  
 19               7366 the following:

20      **“§ 7367. Annual report to congressional committees”;**

21               and

22               (B) in the text immediately following the sec-  
 23      tion heading inserted by subparagraph (A)—

24               (i) by striking “(d)” and inserting “(a)”;

1 (ii) by inserting after the first sentence the  
 2 following new sentence: “Each such report shall  
 3 be based on the annual reports submitted by  
 4 the corporations to the Secretary under section  
 5 7366(b) of this title and shall be submitted not  
 6 later than May 1 of the year following the year  
 7 covered by such reports.”; and

8 (iii) by striking “The report shall” and in-  
 9 serting the following:

10 “(b) Each such report shall”.

11 (2) The table of sections at the beginning of such  
 12 chapter is amended by inserting after the item relating  
 13 to section 7366 the following new item:

“7367. Annual report to congressional committees.”.

14 (c) EXTENSION OF AUTHORITY TO ESTABLISH RE-  
 15 SEARCH CORPORATIONS.—Section 7368 is amended by  
 16 striking “December 31, 2003” and inserting “December  
 17 31, 2006”.

18 **SEC. 8. DEPARTMENT OF DEFENSE PARTICIPATION IN RE-**  
 19 **VOLVING SUPPLY FUND PURCHASES.**

20 (a) ENHANCEMENT OF DEPARTMENT OF DEFENSE  
 21 PARTICIPATION.—Section 8121 is amended—

22 (1) by redesignating subsection (b) and (c) as  
 23 subsections (d) and (e), respectively;

24 (2) by designating the last sentence of sub-  
 25 section (a) as subsection (c); and

1           (3) by inserting after paragraph (3) of sub-  
 2           section (a) the following new subsection:

3           “(b) The Secretary may authorize the Secretary of  
 4           Defense to make purchases through the fund in the same  
 5           manner as activities of the Department. When services,  
 6           equipment, or supplies are furnished to the Secretary of  
 7           Defense through the fund, the reimbursement required by  
 8           paragraph (2) of subsection (a) shall be made from appro-  
 9           priations made to the Department of Defense, and when  
 10          services or supplies are to be furnished to the Department  
 11          of Defense, the fund may be credited, as provided in para-  
 12          graph (3) of subsection (a), with advances from appropria-  
 13          tions available to the Department of Defense.”.

14          (b) EFFECTIVE DATE.—The amendments made by  
 15          subsection (a) shall apply only with respect to funds ap-  
 16          propriated for a fiscal year after fiscal year 2002.

17       **SEC. 9. NAME OF DEPARTMENT OF VETERANS AFFAIRS**

18                       **OUTPATIENT CLINIC, NEW LONDON, CON-**

19                       **NECTICUT.**

20          The Department of Veterans Affairs outpatient clinic  
 21          located in New London, Connecticut, shall after the date  
 22          of the enactment of this Act be known and designated as  
 23          the “John J. McGuirk Department of Veterans Affairs  
 24          Outpatient Clinic”. Any reference to such outpatient clinic  
 25          in any law, regulation, map, document, record, or other

- 1 paper of the United States shall be considered to be a ref-
- 2 erence to the John J. McGuirk Department of Veterans
- 3 Affairs Outpatient Clinic.

Passed the House of Representatives July 22, 2002.

Attest:

*Clerk.*